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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,046	12/20/2001	James Altadonna JR.	ALTADONNA, Jr Reissue	1438
4988	7590	03/24/2004	EXAMINER	
ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712			HO, UYEN T	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 03/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,046

Applicant(s)

ALTADONNA, JAMES

Examiner

(Jackie) Tan-Uyen T. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Reissue Applications

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 4/18/02 has been considered.
2. The amendment filed 8/10/2002 proposes amendments to 12-33 that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required. All limitations of the claims must be underline.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6, 12, 13, 17, 23, 24 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by T. Albu (3,463,149). Albu discloses a intra-nasal clip as claimed comprising odor emitting means (11, including all the limitations as claimed) attached to distal ends of a bendable arcuate band (19) wherein the band includes a pair of reverse curvatures providing for separated of said end from contact with the surface of the user's nasal septum (figure 5) and an inner surface for intra-nasal contacting the user's nasal septum (see figure 5 and col. 2 for details of the odor emitting means and the arcuate band).

Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Albu's nose air filter clip which is capable of being used as claimed if one desires to do so.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-5, 7-9, 10, 14-16, 18-21, 25-27 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albu '149.

In regard to claims 3, 4, 14, 15, 25 and 26, although Albu fails to disclose the bendable arcuate band being coated with a fabric, it is known in the art to coat a clip or a device placing on a patient skin with fabric to provide comfort for the patient. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the band of Albu's nasal clip with fabric in order to provide comfort for the user.

In regard to claims 5, 16 and 27, although Albu fails to disclose the bendable arcuate band being made from aluminum, aluminum is a well known material in the art to make a clip or bendable device in order to provide flexibility to the clip or bendable device. Therefore, it would have been obvious to one having ordinary skill in the art at

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the time the invention was made to use a known material for making the band of Albu's nasal clip in order to provide a desire flexibility for the clip.

In regard to claims 8-10, 18-21, 29-31, although Albu fails to disclose the nasal clip being enclosed in packaging pouches comprising an odor and oxygen barrier and having weakening means for facilitating user tear-off of individual packaging pouches as desired, this is known in the art to place the nasal clip or medical devices including perfume or medication in the packaging pouches as claimed in order to provide the protection of the clip or devices. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was make to pack the Albu's nasal clip in a packaging pouches as claimed which is known in the art order to provide the protection of the clip or devices. Doing so the steps as claimed in claim 33 are inherently carried out as when the Albu's nasal clip being used.

Allowable Subject Matter

7. Claims 11 and 22 are allowed because the prior art fails to disclose or suggest to use the nasal clip of Albu in the situations as claimed.

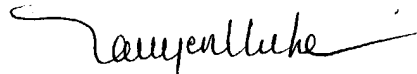
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731
March 21, 2004